UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,806	05/25/2006	David Jay Duffield	PU030224	8853

7590   01/19/2011

Joseph S Tripoli
Thomson Licensing Inc
Two Independence Way
Suite 200
Princeton, NJ 08540

EXAMINER
CHOKSHI, PINKAL R

ART UNIT	PAPER NUMBER
2425	

MAIL DATE	DELIVERY MODE
01/19/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/580,806	DUFFIELD, DAVID JAY
	Examiner	Art Unit	
	Pinkal R. Chokshi	2425	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>20 December 2010</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1,2,4-8 and 10-13</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1,2,4-8 and 10-13</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

       1.☐ Certified copies of the priority documents have been received.

       2.☐ Certified copies of the priority documents have been received in Application No. _____.

       3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 11/23/2010 have been fully considered but they are

not persuasive. Regarding claim 1, Applicant asserts that the combination of Peterka,

Candelore, and Stewart does not teach generating a billing record in response to the

receipt of the authorization key. Examiner respectfully disagrees. Stewart is used only

for the limitation "generating a billing record in response to the receipt of the

authorization key" where the other limitations of claim 1 are taught by Peterka and

Candelore. Peterka discloses (¶0047) that the client computer generates and transmits

the billing record to the service provider at a later time. However, Peterka does not

teach that the billing record is generated in response to the receipt of the authorization

key. Stewart discloses (¶0023, ¶0039, ¶0041) that billing code is generated in response

to an authorization code received by the user device. Therefore, it renders the

obviousness of the claim and the rejection is maintained.

With regard to the dependent claims, the respective rejections are maintained as

Applicant has only argued that the combination of Peterka, Candelore, and Stewart

does not cure the deficiencies of claim 1, nevertheless it is the Examiner's contention

that the combination of these references does not contain any deficiencies. See the

rejection below.

Drawings

2.   The drawings are objected to under 37 CFR 1.83(a) because they fail to show

details for reference numbers as described in the specification. **Reference numbers**

shown on the drawings should include corresponding details in the drawing (i.e.

reference number 105 is used for Headend, etc). Any structural detail that is

essential for a proper understanding of the disclosed invention should be shown in the

drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR

1.121(d) are required in reply to the Office action to avoid abandonment of the

application. Any amended replacement drawing sheet should include all of the figures

appearing on the immediate prior version of the sheet, even if only one figure is being

amended. The figure or figure number of an amended drawing should not be labeled as

"amended." If a drawing figure is to be canceled, the appropriate figure must be

removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several

views of the drawings for consistency. Additional replacement sheets may be necessary

to show the renumbering of the remaining figures. Each drawing sheet submitted after

the filing date of an application must be labeled in the top margin as either

"Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are

not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held

in abeyance.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

4.   **Claims 1, 2, 4, 5, 8, and 13** are stand rejected under 35 U.S.C. 112, second

paragraph, as being indefinite for failing to particularly point out and distinctly claim the

subject matter which applicant regards as the invention.

5.   The means for processing, generating, and purchasing are done by a processor

and therefore a corresponding algorithm must be disclosed. The rejection is

maintained.

6.   Claim element "means for communicating", "means for receiving", "means for

processing", "means for generating", "means for purchasing" are a means (or step) plus

function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written

description fails to disclose the corresponding structure, material, or acts for the claimed

function. In the specification, several paragraphs mention communicating, receiving,

processing, generating information. However, the specification does not teach how it is

being done or there is no corresponding algorithm disclosed for these functions.

        Applicant is required to:

        (a) Amend the claim so that the claim limitation will no longer be a means (or

step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

        (b) Amend the written description of the specification such that it expressly

recites what structure, material, or acts perform the claimed function without introducing

any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8.   **Claims 1, 2, 4-8, and 10-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over US PG Pub 2002/0170053 to Peterka et al (hereafter referenced as Peterka) in view of US Patent 6,697,489 to Candelore et al (hereafter referenced as

Candelore) and US PG Pub 2003/0140348 to Stewart (hereafter referenced as

Stewart).

Regarding **claim 1,** "an access device" reads on the client computer that

receives the free preview of a program before deciding to order the program

(abstract) disclosed by Peterka and represented in Fig. 1 (element 112).

As to "device comprising: means for communicating an impulse purchase

selection to a service provider" Peterka discloses (¶0047, ¶0090) that the server

system provides a free preview of the initial portion of the program, where after

watching the preview, user decides to purchase the program content (IPPV) as

represented in Fig. 5 (element 512).

As to "means for receiving an authorization key transmitted by the service

provider in response to the impulse purchase selection" Peterka discloses

(¶0086, ¶0090, ¶0095-¶0101, claim 10) that the key is provided by a server in

response to the purchase request received from client computer as represented

in Fig. 5.

As to "means for receiving a program associated with the impulse

purchase selection" Peterka discloses (¶0090, ¶0132) that the requested

program content is distributed to the client computer as represented in Fig. 5

(element 520) and Fig. 16B.

As to "means for processing the received program using the authorization

key" Peterka discloses (¶0090) that the user is provided with the key that is used

to decrypt the encrypted programming content transmitted to client computer as represented in Fig. 6 (element 616).

As to "wherein the access device transmits the billing record to the service provider" Peterka discloses (¶0047) that the client computer stores a record of the impulse PPV and transmits the billing record to the service provider at a later time.

Peterka meets all the limitations of the claim except "communicating to a service provider using an out of band frequency which is different than content providing frequencies." However, Candelore discloses (col.8, lines 37-48) that the set top unit uses out-of-band frequency transmitter, which is different than the content received, to deliver request to head-end for IPPV program as represented in Fig. 8 (element 721). Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Peterka's system by using out-of-band frequency to communicate between STB and head-end as taught by Candelore in order to separate two different kinds of data from the stream.

Combination of Peterka and Candelore meets all the limitations of the claim except "generating a billing record in response to the receipt of the authorization key." However, Stewart discloses (¶0023, ¶0039, ¶0041) that based on the request received from the user to view the programming, service provider generates authorization code and transmits it to the subscriber, where billing control system generates billing code when a user receives an

authorization code as represented in Fig. 4 (elements 406-410). However, it

would have been obvious because a person of ordinary skills in the art has only a

finite number of predictable solutions within his or her technical grasp.

Generating billing information after the authorization code has been received at

the receiver is widely known and also taught by Stewart et al. One skilled in the

art would have selected a receiver to generate a billing information after the

authorization code is received is likely a product of ordinary skill and common

sense, not of innovation. It would have been an obvious matter of design choice

to use receiver, instead billing system, to generate billing information, since

applicant has not disclosed that using receiver to generate billing information

solves any stated problem or is for any particular purpose and it appears that the

invention would perform equally well with the billing system of Stewart.

Regarding **claim 2,** "an access device comprising: means for indicating a

desired impulse purchase selection" reads on the client computer that receives

the free preview of a program before deciding to order the program (abstract)

disclosed by Peterka and represented in Fig. 1 (element 112). Peterka further

discloses (¶0047, ¶0090) that the server system provides a free preview of the

initial portion of the program, where after watching the preview, user decides to

purchase the program content (IPPV) as represented in Fig. 5 (element 512).

As to "means for communicating the desired impulse purchase selection

to a service provider" Peterka discloses (¶0047, ¶0090) that the server system

provides a free preview of the initial portion of the program, where after watching

the preview, user decides to purchase the program content (IPPV) as

represented in Fig. 5 (element 512).

As to "means for receiving an authorization key transmitted to the access

device, and specific to, the desired impulse purchase selection" Peterka

discloses (¶0086, ¶0090, ¶0095-¶0101, claim 10) that the key is provided by a

server for a requested program in response to the purchase request received

from client computer as represented in Fig. 5.

As to "means for receiving the transmission of a desired program

associated with the impulse purchase selection" Peterka discloses (¶0090,

¶0132) that the requested program content is distributed to the client computer

as represented in Fig. 5 (element 520) and Fig. 16B.

As to "means for processing the received program using the authorization

key" Peterka discloses (¶0090) that the user is provided with the key that is used

to decrypt the encrypted programming content transmitted to client computer as

represented in Fig. 6 (element 616).

As to "wherein the access device transmits the billing record to the service

provider" Peterka discloses (¶0047) that the client computer stores a record of

the impulse PPV and transmits the billing record to the service provider at a later

time.

Peterka meets all the limitations of the claim except "communicating to a

service provider using an out of band frequency which is different than content

providing frequencies." However, Candelore discloses (col.8, lines 37-48) that

the set top unit uses out-of-band frequency transmitter, which is different than the

content received, to deliver request to head-end for IPPV program as

represented in Fig. 8 (element 721). Therefore, it would have been obvious to

one of the ordinary skills in the art at the time of the invention to modify Peterka's

system by using out-of-band frequency to communicate between STB and head-

end as taught by Candelore in order to separate two different kinds of data from

the stream.

Combination of Peterka and Candelore meets all the limitations of the

claim except "generating a billing record in response to the receipt of the

authorization key." However, Stewart discloses (¶0023, ¶0039, ¶0041) that

based on the request received from the user to view the programming, service

provider generates authorization code and transmits it to the subscriber, where

billing control system generates billing code when a user receives an

authorization code as represented in Fig. 4 (elements 406-410). However, it

would have been obvious because a person of ordinary skills in the art has only a

finite number of predictable solutions within his or her technical grasp.

Generating billing information after the authorization code has been received at

the receiver is widely known and also taught by Stewart et al. One skilled in the

art would have selected a receiver to generate a billing information after the

authorization code is received is likely a product of ordinary skill and common

sense, not of innovation. It would have been an obvious matter of design choice

to use receiver, instead billing system, to generate billing information, since

applicant has not disclosed that using receiver to generate billing information

solves any stated problem or is for any particular purpose and it appears that the

invention would perform equally well with the billing system of Stewart.

Regarding **claim 4,** "the access device wherein the means for receiving

the authorization key receives the authorization key via an out of band frequency"

Candelore discloses (col.5, lines 40-45; col.8, lines 8-65) that the service

provider transmits encrypted service key to the receiving device using out-of-

band channel as represented in Fig. 8 (element 720). In addition, same

motivation is used as rejection to claim 2.

Regarding **claim 5,** "the access device wherein the means for

communicating the desired impulse purchase utilizes a two way communications

interface" Peterka discloses (¶0058) that the consumer-server connection is

typically a 2-way connection as represented in Fig. 1 (element 100) and Fig. 2

(element 206).

Regarding **claim 6,** "the access device wherein the billing record

transmitted to the service provider is transmitted via the two way communications

interface" Peterka discloses (¶0058) that the consumer-server communication is

a 2-way connection as represented in Fig. 1.

Regarding **claim 7,** "an access device" reads on the client computer that receives the free preview of a program before deciding to order the program (abstract) disclosed by Peterka and represented in Fig. 1 (element 112).

As to "comprising: a tuning and a communications unit for transmitting an impulse purchase message" Peterka discloses (¶0047, ¶0090) that the server system provides a free preview of the initial portion of the program, where after watching the preview, user decides to purchase the program content (IPPV) as represented in Fig. 5 (element 512). Peterka further discloses (¶0036) that the user computer includes a communication system for transmitting/receiving data to/from the service provider as represented in Fig. 2 (element 206).

As to "receiving an authorization key transmitted in response to the transmission of the impulse purchase message and associated with the impulse purchase program" Peterka discloses (¶0086, ¶0090, ¶0095-¶0101, claim 10) that the key is provided by a server in response to the purchase request received from client computer, where the key is associated with the service (IPPV) as represented in Fig. 5.

As to "a controller and decoder unit responsive to the authorization key that formats a digital program into a video display" Peterka discloses (¶0090) that the client computer is provided with the key that is used to decrypt the encrypted programming content transmitted to client as represented in Fig. 6 (element 616).

As to "wherein the access device transmits the billing record to the same location as the impulse purchase message" Peterka discloses (¶0047) that the client computer stores a record of the impulse PPV and transmits the billing record to the service provider at a later time.

Peterka meets all the limitations of the claim except "communicating to a service provider using an out of band frequency which is different than content providing frequencies." However, Candelore discloses (col.8, lines 37-48) that the set top unit uses out-of-band frequency transmitter, which is different than the content received, to deliver request to head-end for IPPV program as represented in Fig. 8 (element 721). As to "a controller and decoder formats a digital program into a video display" Candelore discloses (col.4, lines 28-30) that the display device displays the processing digital video signals. Therefore, it would have been obvious to one of the ordinary skills in the art at the time of the invention to modify Peterka's system by using out-of-band frequency to communicate between STB and head-end as taught by Candelore in order to separate two different kinds of data from the stream.

Combination of Peterka and Candelore meets all the limitations of the claim except "a billing generator which generates a billing record in response to the receipt of the authorization key." However, Stewart discloses (¶0023, ¶0039, ¶0041) that based on the request received from the user to view the programming, service provider generates authorization code and transmits it to the subscriber, where billing control system generates billing code when a user

receives an authorization code as represented in Fig. 4 (elements 406-410).

However, it would have been obvious because a person of ordinary skills in the

art has only a finite number of predictable solutions within his or her technical

grasp. Generating billing information after the authorization code has been

received at the receiver is widely known and also taught by Stewart et al. One

skilled in the art would have selected a receiver to generate a billing information

after the authorization code is received is likely a product of ordinary skill and

common sense, not of innovation. It would have been an obvious matter of

design choice to use receiver, instead billing system, to generate billing

information, since applicant has not disclosed that using receiver to generate

billing information solves any stated problem or is for any particular purpose and

it appears that the invention would perform equally well with the billing system of

Stewart.

Regarding **claim 8,** "a method of providing a secure means for purchasing

an impulse purchase program" reads on the method using encryption keys to

distribute program content (abstract) disclosed by Peterka and represented in

Fig. 1 (element 112).

As to "method comprising the steps of: communicating a message to a

service provider means that indicates an impulse purchase selection" Peterka

discloses (¶0047, ¶0090) that the server system provides a free preview of the

initial portion of the program, where after watching the preview, user decides to

purchase the program content (IPPV) as represented in Fig. 5 (element 512).

As to "receiving, at a receiver, authorization information transmitted in

response to the communicated message, and specific to the impulse purchase

program" Peterka discloses (¶0086, ¶0090, ¶0095-¶0101, claim 10) that the key

is provided by a server in response to the purchase request received from client

computer, where the key is associated with the service (IPPV) as represented in

Fig. 5.

As to "receiving, at a receiver, the impulse purchase program" Peterka

discloses (¶0090, ¶0132) that the requested program content is distributed to the

client computer as represented in Fig. 5 (element 520) and Fig. 16B.

As to "processing the impulse purchase program in response to the

authorization information" Peterka discloses (¶0090) that the user is provided

with the key that is used to decrypt the encrypted programming content

transmitted to client computer as represented in Fig. 6 (element 616).

As to "transmitting the billing record from the receiver to the service

provider" Peterka discloses (¶0047) that the client computer stores a record of

the impulse PPV and transmits the billing record to the service provider at a later

time.

Peterka meets all the limitations of the claim except "using an out of band

frequency which is different than content providing frequency." However,

Candelore discloses (col.8, lines 37-48) that the set top unit uses out-of-band

frequency transmitter, which is different than the content received, to deliver

request to head-end for IPPV program as represented in Fig. 8 (element 721).

Therefore, it would have been obvious to one of the ordinary skills in the art at

the time of the invention to modify Peterka's system by using out-of-band

frequency to communicate between STB and head-end as taught by Candelore

in order to separate two different kinds of data from the stream.

     Combination of Peterka and Candelore meets all the limitations of the

claim except "generating a billing record at the receiver in response to the receipt

of the authorization key." However, Stewart discloses (¶0023, ¶0039, ¶0041)

that based on the request received from the user to view the programming,

service provider generates authorization code and transmits it to the subscriber,

where billing control system generates billing code when a user receives an

authorization code as represented in Fig. 4 (elements 406-410). However, it

would have been obvious because a person of ordinary skills in the art has only a

finite number of predictable solutions within his or her technical grasp.

Generating billing information after the authorization code has been received at

the receiver is widely known and also taught by Stewart et al. One skilled in the

art would have selected a receiver to generate a billing information after the

authorization code is received is likely a product of ordinary skill and common

sense, not of innovation. It would have been an obvious matter of design choice

to use receiver, instead billing system, to generate billing information, since

applicant has not disclosed that using receiver to generate billing information

solves any stated problem or is for any particular purpose and it appears that the

invention would perform equally well with the billing system of Stewart.

Regarding **claim 10,** "the method wherein the receiving step comprises

receiving the authorization via an out of band frequency" Candelore discloses

(col.5, lines 40-45; col.8, lines 8-65) that the service provider transmits encrypted

service key to the receiving device using out-of-band channel as represented in

Fig. 8 (element 720). In addition, same motivation is used as rejection to claim 8.

Regarding **claim 11,** "the method wherein the communicating step

comprises communicating the message via a two way communications interface"

Peterka discloses (¶0058) that the consumer-server connection is typically a 2-

way connection as represented in Fig. 1 (element 100) and Fig. 2 (element 206).

Regarding **claim 12,** "the method wherein the billing record is transmitted

to the service provider via the two way communications interface" Peterka

discloses (¶0058) that the consumer-server communication is a 2-way

connection as represented in Fig. 1.

Regarding **claim 13,** "a method of providing a secure means for

purchasing an impulse purchase program" reads on the method using encryption

keys to distribute program content (abstract) disclosed by Peterka and

represented in Fig. 1 (element 112).

As to "method comprising the steps of: selecting the desired impulse

purchase program" Peterka discloses (¶0047, ¶0090) that the server system

provides a free preview of the initial portion of the program, where after watching

the preview, user decides to purchase the program content (IPPV) as

represented in Fig. 5 (element 512).

As to "communicating the desired impulse purchase program selection to

a service provider" Peterka discloses (¶0047, ¶0090) that the client contacts the

server to request the programming content.

As to "responding to the communicated impulse purchase program

selection by transmitting an authorization code to the access device uniquely

associated with the desired impulse purchase program" Peterka discloses

(¶0086, ¶0090, ¶0095-¶0101, claim 10) that the key is provided by a server in

response to the purchase request received from client computer, where the key

is associated with the service (IPPV) as represented in Fig. 5.

As to "transmitting to the access device an impulse purchase program

having an entitlement code" Peterka discloses (¶0123) that the program content

sent to the client computer includes EMM and ECM.

As to "transmitting the billing record from the access device to the service

provider" Peterka discloses (¶0047) that the client computer stores a record of

the impulse PPV and transmits the billing record to the service provider at a later

time.

As to "storing the authorization code associated with the desired impulse

purchase program into a security module in the access device" Peterka discloses

(¶0086, ¶0090, ¶0095-¶0101, claim 10) that the key is provided by a server to a

client computer in response to the purchase request received from client

computer, where the key is associated with the service (IPPV) as represented in

Fig. 5. However, Peterka does not explicitly teach that the authorization code is

stored into a security module in the access device. However, Candelore

discloses (col.8, line 66-col.9, line 6) that the decoder receives the service key for

each requested session is stored in the memory of the decoder as represented in

Fig. 8 (element 735).

As to "using an out of band frequency which is different than content

providing frequency" Candelore discloses (col.8, lines 37-48) that the set top unit

uses out-of-band frequency transmitter, which is different than the content

received, to deliver request to head-end for IPPV program as represented in Fig.

8 (element 721).

As to "an entitlement code associated with authorization code stored in the

security module and decoding the entitlement code" Candelore discloses (col.3,

lines 49-61) that the program data received at the device includes EMM and

ECM. Candelore further discloses (col.4, lines 35-56; col.5, lines 30-34) that the

device uses the stored key (authorization code) to match it with the entitlements

processed from the received content stream.

As to "comparing the entitlement code to the code stored in the security

module to permit viewing of the impulse purchase program" Candelore discloses

(col.4, lines 50-56) that when the scrambled program content is received in the

device, the access requirement (entitlement code) of the program is compared to

the entitlements stored in the device. Therefore, it would have been obvious to

one of the ordinary skills in the art at the time of the invention to modify Peterka's

system by using out-of-band frequency to communicate between STB and head-

end and compare the stored key with EMM of the stream as taught by Candelore

in order to separate two different kinds of data from the stream and also to allow

the viewer to view the correct requested IPPV programs (col.2, lines 54-56).

Combination of Peterka and Candelore meets all the limitations of the

claim except "generating a billing record at the access device in response to the

receipt of the authorization key." However, Stewart discloses (¶0023, ¶0039,

¶0041) that based on the request received from the user to view the

programming, service provider generates authorization code and transmits it to

the subscriber, where billing control system generates billing code when a user

receives an authorization code as represented in Fig. 4 (elements 406-410).

However, it would have been obvious because a person of ordinary skills in the

art has only a finite number of predictable solutions within his or her technical

grasp. Generating billing information after the authorization code has been

received at the receiver is widely known and also taught by Stewart et al. One skilled in the art would have selected a receiver to generate a billing information after the authorization code is received is likely a product of ordinary skill and common sense, not of innovation. It would have been an obvious matter of design choice to use receiver, instead billing system, to generate billing information, since applicant has not disclosed that using receiver to generate billing information solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the billing system of Stewart.

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pinkal R. Chokshi whose telephone number is (571) 270-3317. The examiner can normally be reached on Monday-Friday 8 - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian T. Pendleton can be reached on 571-272-7527. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pinkal R. Chokshi/
Examiner, Art Unit 2425

/Brian T Pendleton/
Supervisory Patent Examiner, Art Unit 2425